



Service and Representation for Town Governments of New York

**PUBLIC HEARING
on
2012-2013 Executive Budget**

Presented to

**Senate Finance Committee
and
Assembly Ways and Means Committee**

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Submitted by:

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THE ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK

Greeting

Good Afternoon, Chairmen and Members of the Senate Finance and Assembly Ways and Means Committees. Thank you for the opportunity to appear here today to discuss the Association's views on the proposed Executive Budget for State Fiscal Year 2012-2013.

State and Local Partnership

The Association of Towns was formed in 1933 by town officials to help town governments obtain greater economy and efficiency. We look to the State as a partner to help town officials achieve these goals. The State budget sets forth many funding opportunities to support our partnership, with most of the funding derived from the following programs: Aid and Incentives for Municipalities (AIM); Efficiency Grants; Consolidated Highway Improvement Program (CHIPS); the Municipal Streets and Highway Program (Marchiselli); and the Environmental Protection Fund. In addition to these important programs, towns receive funding for quality of life programs for seniors, summer youth programs and libraries. Nearly nine million people who live in towns depend upon these aid programs to fund town services.

AIM and Incentive Funding

The 2012-2013 Executive Budget continues AIM funding at last year's levels with towns and villages receiving \$67.6 million and cities receiving \$647.1 million. The AIM program is a general purpose revenue sharing program that is essential for local governments. Inadequate revenue sharing contributes to high real property taxes, and adds stress to already burdened municipal budgets. Town officials are currently employing every tool available to help keep their budgets within the recently enacted tax cap, and to keep real property taxes as low as possible for their residents. Maintaining AIM at last year's funding levels will assist town officials in accomplishing these goals.

In addition to AIM, several local incentive and efficiency programs are continued in the 2012-2013 Executive Budget. The Association of Towns strives to assist local governments to operate more efficiently, and therefore we support voluntary intermunicipal cooperation and grant programs that will help local governments share services. Towns have been working cooperatively to streamline services and save taxpayer dollars for decades, and local governments are increasingly undertaking efforts towards this end. We anticipate that appropriations made to further local government cooperative initiatives will help this drive this trend.

Highway and Transportation Funding

New York's economy cannot grow without a reliable and safe transportation network. Local governments own and maintain nearly 100,000 centerline miles (towns are responsible for approximately 60,000 centerline miles) and over 8,600 highway bridges. Over 67 billion vehicle miles are traveled annually on local roads and this travel is increasing at a rate of almost 2.5 percent per year. Locally owned infrastructure surpasses State owned infrastructure, accounting for more than 87 percent of New York's roads, 52 percent of New York's bridges and 48 percent of vehicle mileage logged in New York State.ⁱ

Funding local roads and bridges is therefore vital to our economic prosperity. Towns, on average, fund 75 percent of local infrastructure needs with local revenue streams. Unfortunately the prolonged recession, increases in the cost of commodities (Aggregate Municipal Cost Index is up 4.2 percent with diesel fuel up 27 percent) and efforts to keep property taxes in line with the new tax cap law have taken a toll on local resources. The CHIPS and Marchiselli funding programs are crucial to filling the cracks in local funding streams. Funding local highway and bridge capital programs should be a top priority during the 2012-2013 budget negotiations. We are grateful that the Governor has included funding for these programs at last year's levels (CHIPS - \$363.1 million Marchiselli - \$39.7 million). While we are grateful that these programs have been maintained at last year's level we are hopeful that as state revenues increase more funding will be provided for these vital programs.

We also support the proposal extending through March 31, 2013 the eligibility criteria for CHIPS funding to include expenses associated with (1) microsurfacing, (2) paver placed surface treatment, (3) single course surface treatment involving chip seals and oil and stone, and (4) double course surface treatment involving chip seals and oil and stone.ⁱⁱ We encourage the Legislature to enact a permanent solution to the restrictions placed on CHIPS and Marchiselli funding due to limitations associated with bonding rules and regulations.

The CHIPS and Marchiselli programs are primarily funded by bonds issued by the Thruway Authority with debt service paid from the State's Dedicated Highway and Bridge Trust Fund (DHBTF). The State Comptroller has reported shortfalls in the DHBTF due to continued use of said funds for noncapital expenses such as funding DMV operations. In order to address shortfalls in the DHBTF, we support efforts in the Executive Budget to increase funding of the DHBTF with revenue from the DOT Accident Damage account funded by penalties collected by the Commissioner of DOT pursuant to Highway Law, §136.ⁱⁱⁱ More steps could be taken to increase revenue to the DHBTF by passage of several key bills. We support passage of the Bridge and Road Investment and Dedicated Fund Guaranteed Enforcement (BRIDGE) Reform Act^{iv} which would phase out the use of these funds to support DMV and DOT operating expenses. We also support passage of companion legislation, which would dedicate a portion of funds brought in through sales tax revenue on gasoline for the Dedicated Highway and Bridge Trust Fund.^v

Transportation funding can be stretched further with mandate relief measures. Last session, as part of the property tax cap, the Legislature enacted some temporary mandate relief measures that we believe should be made permanent. Amendments to General Municipal Law, §103(3) and County law, §408-a (2) temporarily allows towns to piggyback off public works contracts already competitively bid by a county, saving town taxpayers the added expense of competitively bidding the project themselves..^{vi} This measure is set to expire on June 24, 2014 and should be made permanent.

In addition, the tax cap legislation also increased the bidding threshold for CHIPS projects. Amendments to the Highway Law, §10-c (4) (e) increased the competitive bidding

threshold for CHIPS work from \$100,000 to \$250,000 to expand the ability of towns to use their own labor to perform CHIPS work which saves an estimated thirty-three percent of project costs otherwise spent on prevailing wage requirements.^{vii} The state could lower costs for large capital works projects even further by addressing the manner in which prevailing wage is calculated. The current statutory requirements for prevailing wage calculations increases highway construction projects on average by thirty-three percent (33%).^{viii} Enactment of legislation, such as A5716 {Jordan}, which would calculate prevailing wage based upon salary averages in a given county would lower costs to the real property taxpayer and therefore stretch highway funding dollars to include more projects.

Environmental Protection Fund

The Environmental Protection Fund (EPF) is one of the main state funding programs for local services. Maintaining clean drinking water, fresh air and open space for farming and recreation are essential services local governments provide to all New Yorkers. The enactment of the EPF in 1993 provided a dedicated source of funding for resource preservation programs such as recycling, landfill closure, municipal parks, farmland preservation, open space, water quality and pollution prevention. The EPF is principally funded from the Real Estate Transfer Tax (RETT). The Executive Budget proposes funding for the EPF at \$134 million which is the same level of spending in the 2011-12. In addition to the funding for the EPF, the Governor has proposed \$102 million in new funding for DEC to advance flood control, coastal erosion and critical dam safety projects. While we support the Governor's proposal, there is still a great unmet need to repair, replace and upgrade ailing municipal water and wastewater infrastructure. Therefore as funds become available, we respectfully request the Legislature utilize those funds to assist local governments in protecting our environment. Clean and plentiful water is a top criterion businesses look for when deciding where to locate a business or factory. Access to plentiful water is one advantage New York has over other regions and thus spending our limited resources to ensure that we preserve this asset, will not only improve our quality of life but it will improve our economy at the same time.

We are concerned about the continued cuts to the Department of Environmental Conservation. The Executive Budget proposes to reduce funding for the Department of Environmental Conservation by sixteen percent (16%), or \$167 million, to \$872 million, largely tracking a drop in federal stimulus money. These proposed cuts follow several years of staff and resource reductions at the Department. Due to staff reductions and reassignments, DEC has already reduced the technical assistance that it once provided to municipal wastewater treatment plant operators. While we understand the need to reduce expenses and to keep programs in line with Federal funding resources, we are concerned that additional staff reductions will likely impact the Department's ability to provide needed technical assistance to local governments as well as proper oversight for state and federal programs.

In addition, we support the exempting municipalities from nuisance wildlife control operator license fees as proposed in the Executive Budget.^{ix} Finally, the Executive Budget changes the length and fees associated with several hunting and fishing permits with an eye towards administrative cost reductions.

Real Property Tax Administration

Aid for Cyclical Reassessments

In the appropriation bill for aid to localities, the Executive Budget provides \$926,000 for financial assistance for the improvement of real property tax administration. The bill qualifies, however, the primary source of aid to municipalities for this purpose and eliminates a significant component of the recently enacted cyclical aid program.

In 2010, the Legislature established a cyclical aid program to replace then-existing assessment aid programs. The cyclical aid program provides aid to assessing units upon the completion a revaluation at 100 percent of market value pursuant to an approved plan. The plan must be for a period of at least four years and require a revaluation at least every fourth year plan and an inventory every sixth year. The amount of aid available is \$5 per parcel for each year in

which a revaluation takes place and \$2 per parcel for each non-revaluation year pursuant to the plan. The non-revaluation aid paid to towns under the new program may be recaptured should a town withdraw from an approved plan or fail to conduct a revaluation as required by the approved plan.

For 2012, however, assessment aid will only be paid to those municipalities that are conducting a revaluation for the first time in three years. That means that any municipality that was otherwise eligible for the \$2 per parcel aid to advance their approved plan would not receive any aid for 2012. In addition to losing non-revaluation aid for 2012, towns that withdraw from their plans may as a result may face difficulty in obtaining future aid under this program. Thankfully, since the program is only in its second year, no aid should be subject to the recapture provisions for the non-revaluation years. If the state is not going to honor its funding commitment to this program, local governments should not be prejudiced by withdrawing from the plan.

Assessor Training

In recent years, there have been significant changes to how the real property tax is administered. Changes to the STAR exemption, including the recent 2% cap and the income eligibility requirement, as well as new electronic tax assessment and collection systems and standards will change the way that billing, collection, filing and reporting of real property taxes, assessments and exemptions are currently processed. Yet only \$176,000 was appropriated for assessor training in fiscal year 2012-2013, the same amount that was appropriated for 2011 – 2012.

To put this amount in perspective, in SFY 2009-2010, approximately \$326,000 was paid for assessor reimbursement, the lowest amount since 2003-04. For the three years immediately preceding SFY 2010-2011, assessor reimbursement for SFY's 2007-2010 averaged approximately \$375,000. What is more, in 2010 only 510 assessors received training, compared to an average of over 1,100 per year for the six years immediately preceding 2010. According to

ORPTS, this reduced activity reflects turnover in assessment administration officials and a corresponding increase in the number of uncertified officials.

Despite the need for increased training due to the significant changes in the real property tax administration and the turnover in assessing personnel, the amount of aid for assessor training reimbursement has been reduced to less than half of its average over the past four years. Assessor training is perhaps the most important factor in achieving equitable assessments, and support for training local Assessors on the new rules and standards are increasingly important. Cutting assessment and training aid will not diminish these needs, but will shift the associated costs to the local governments. Accordingly, the State should remain committed to providing funds sufficient to reimburse assessors for receiving their required training.

STAR Exemption Suspension

The proposed 2012-2013 Executive Budget includes language that would suspend the STAR exemption on a parcel should one or more of the owners have a past-due state tax liability. To implement this provision, the Commissioner of Taxation and Finance is charged with establishing procedures for identifying owners with past-due state tax liabilities; for notifying the taxpayers and assessors about the suspension of the STAR exemption; and the procedures for lifting the suspension and notifying the taxpayers and assessors of the same.

The Association of Towns can appreciate the purpose of this bill, and understands that it is designed to minimize any additional fiscal and administrative burden on towns. Nevertheless, we are concerned that in practice this may not be the case. Many of the details of how this program will be implemented have been left to procedures to be adopted by the Commissioner of Taxation and Finance. No matter what procedures are put place, town assessors are likely to be on the front lines of this program. This fact is recognized by the legislation itself, which requires the Commissioner to develop procedures by which the department and assessors shall coordinate and execute their obligations under the program. We submit that this coordinated effort should

take place at a much earlier stage in the process, and the Commissioner should involve and coordinate with local assessors in the development of these procedures as early in the process as possible. Doing so will further the overall goals of the program and facilitate the implementation of the program.

Preserve Dedicated Funds for Intended Purposes

In 2010, the State Comptroller issued a report entitled New York's Deficit Shuffle (April 2010) wherein the Comptroller outlined a common budget practice of "sweeping" funds collected for specific purposes and using said funds for other state budgetary needs. "Fund sweeps have been used increasingly to balance the State budget by transferring money out of dedicated accounts to the General Fund to pay for general State expenses. Certain special revenue funds have permanent language to automatically transfer excess funds to the General Fund. In addition to these permanent transfers, recent budgets have included hundreds of millions of dollars in fund sweeps to the General Fund." ^x There are several funds which were intended to provide revenue for various local programs which are often subject to budget sweeps. Some of the most vulnerable are:

- Environmental Protection Fund, which is primarily funded through real estate transfer fees, to provide a dedicated fund for to support municipal parks, municipal recycling programs and control of water pollution, and open space conservation;
- Local Government Records Management Improvement Fund, which is primarily funded via recording fees, with intended purpose of supporting local government records management, technical and training;
- Dedicated Highway and Bridge Trust Fund, which is funded in part by taxes and fees on motor fuel, highway use and petroleum businesses, established to provide a fund for bridge and highway capital improvements; and

- Code Enforcement Aid, which is funded by a fee on commercial insurance funds, established to provide funding to municipalities for enforcement of the State uniform fire prevention and building code.

Moneys swept from these funds for other state purposes leaves local programs underfunded. While we understand the need to fund other critical state programs, these funds were established to assist local governments with particular services. Local governments have limited revenue sources and rely upon funding from these dedicated program sources to finance state mandates and essential services. We respectfully request that revenue collected for these funds be used to the fund services for which the funds were established.

Mandate Relief

This must be the year that state lawmakers tackle meaningful mandate relief. The Executive Budget addresses some mandate relief for counties regarding Medicaid and early childhood expenditures, which will provide some property tax relief. We believe that more can be accomplished this session to lower property taxes and jump start the economy. Addressing cost drivers such as the manner in which prevailing wage is calculated and inequities in collective bargaining will provide immediate property tax relief. In addition to addressing cost drivers the state could provide more balance to the real property tax system by putting more property on the tax rolls.

Prevailing Wages for Public Works and Services

The New York State Constitution, article I, §17, requires that laborers employed on public works projects be paid no less than “the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected or used.” The Constitution does not define prevailing wage or locality, rather these terms are defined in State law. Labor Law, §220 requires laborers to be paid prevailing wages on all public works contracts regardless of cost. Studies have shown that prevailing wage compliance can result in a 20-to-30 percent increase in project costs. For example, the towns of Nassau and Schodack (Rensselaer County) could have saved between \$400,000 and \$666,666 of the

reconstruction costs of the Nassau Lake Dam. Another example of the cost of prevailing wage can be found in the construction of salt storage sheds to protect New York City drinking water. Municipalities located within the New York City Watershed constructed 39 sand and salt storage facilities from 1997 to 2003. The average cost of a facility was nearly a quarter of a million dollars. Absent prevailing wage requirements, the municipalities would have saved more than \$82,000 per facility, or \$3.2 million for the entire project, which is nearly the cost of 13 of the storage facilities.

Prevailing wage requirement not only increase costs, they also drive small local businesses from the public sector market place. In an open letter of August of 2011, the supervisor of the Town of East Bloomfield (Ontario County) described putting out a bid request for a tree trimming project for the town square. Two companies responded with bids of \$1,200 and \$3,300. Unbeknownst to the low bidder, State Department of Labor rules impose a prevailing wage requirement for those who use chain saws. The rate for this type of work is \$26.32 per hour with a supplemental wage of up to \$15.92. When informed of the prevailing wage, the low bidder withdrew their bid. The cost of the project tripled. The supervisor goes on to note that she and her husband had a tree business for years. She states that the most they ever paid anyone was \$15.00 per hour, and that was to a foreman.

To bring down costs and open the process to more bidders, prevailing wages should include all wages paid, and should reflect what is actually paid for similar work in the immediate region where the local government contract is to be performed. Enacting legislation to recalculate the rate of prevailing wages to be more reflective of market wages in a given community would preserve the intent of the Constitution and lower the cost of public works projects therefore encouraging small and minority owned businesses to participate in the public works market place. We encourage state lawmakers to look at A.5716, introduced by Member of Assembly Tony Jordan, which would recalculate prevailing wages to be more reflective of market wages in the county in which the work will be performed rather than large metropolitan regions.

In addition to looking at alternative methods to calculate prevailing wages for public works projects, we also encourage state lawmakers to examine the costs associated with providing services such as garbage collection and leaf pickup. Towns provide these services to ensure that fewer large trucks are on the roads and to provide lower costs to municipal residents and businesses. Changes in Department of Labor policies and recent case law have lead to these service contracts being subject to prevailing wage. Recalculating prevailing wage rates and the appropriate application of prevailing wage rules will also help reduce the cost of these services for the taxpayer.

Workforce Reforms

Agency shop fees, past practice rules, binding arbitration, mandatory paid time off for health screenings and continuation of provisions after contracts expire all hamper the bargaining power of local government leaders when negotiating the new terms and conditions of fair collective bargaining agreements. Town officials want to provide strong benefits, safe work environments and competitive compensation to town employees. Unfortunately, revenue shortfalls, the increasing cost of commodities, rising pension contributions and skyrocketing health insurance premiums often hamper their ability to provide everything that they would like to provide to their employees. Reexamining these bargaining rules with an eye towards affordability and fairness will protect employee rights while leveling the playing field for all.

Tier VI

The executive budget proposes a new tier (Tier VI) in the state pension system. The highlights of Tier VI include an increase in the employees' contribution to the pension system; vesting after 12 years of services; reducing the pension multiplier; and introducing a defined contribution program in which an employee can elect to participate. The defined contribution program would require an employer contribution of four percent and a match of the employee's contributions of up to an additional three percent. Under the defined contribution program, the maximum an employer would have to pay is seven percent.

The establishment of a new pension tier will offer local governments long-term relief from a costly mandate, and although it may be some years before the cost savings from this measure will be realized, the cost savings will be significant and necessary. Just imagine what current pension costs would be today if subsequent pension tiers had not been created. This new pension tier offers the promise of long-term relief from one of the most significant mandates, and allows the Governor and the Legislature to shift their focus to mandate relief that will have a more immediate effect. Existing mandates that have driven real property taxes to the levels seen today, such as prevailing wage, competitive bidding and collective bargaining requirements, will cause real property taxes to continue to increase if left unchecked.

Property Tax System Reforms

In addition to the mandate relief set forth above, comprehensive reform of the real property tax system is necessary to ensure that property taxes are equitably distributed amongst the taxpayers. Often overlooked in such discussions are comprehensive reforms to real property tax exemptions. Approximately 33 percent of all real property in New York State is tax exempt, due to the scores of real property tax exemptions that are provided by law. Nevertheless, real property tax exemptions do not reduce the amount of money that a local government must raise by taxes in order to provide services within its borders. Rather, they simply cause that amount to be raised from a smaller tax base. The shift in tax burden to those left without exemptions results in a continually diminishing tax base shouldering a continually increasing tax burden.

Akin to exemptions, properties owned as a condominium or cooperative receive preferential treatment when it comes to real property taxation. Condominiums and cooperatives are valued not by using comparable sales, as are most residential homes, but rather in the same manner as an apartment building would be assessed. In essence, since the sum of all condominium units cannot exceed the sum of the whole complex, and each individual unit is discounted accordingly. This approach results in an assessment of the condominium unit that is significantly less than its market value. This disparity in assessments becomes more obvious as large, single family homes are being developed as a typical subdivision, yet owned as condominiums.

These issues are essential to any conversation about meaningful real property tax reform. Restricting the number of real property tax exemptions enacted each year and changing the way condominiums are assessed will distribute the tax burden in a more equitable manner.

Conclusion

State and local officials alike are working with fewer resources while continuing to provide essential services and quality of life programs to ensure a prosperous New York. The Association of Towns is supportive of the Governor's proposals that continue state aid and assist our towns in providing the highest quality services at the lowest possible cost. Providing relief from the most significant of mandates will leverage this aid and assistance even further, without compromising the policies behind the mandated programs. The Association of Towns looks forward to working with the Legislature and the Governor to accomplish this goal.

ⁱ Shufon "A 20 year Needs Assessment of Local Jurisdiction Highways and Bridges in New York State (December 2007) commissioned by the NYSAOTSOH.

ⁱⁱ S. 6258/A. 9058 Part A section 2.

ⁱⁱⁱ S. 6258/A. 9058 Part B section 1.

^{iv} S1071a {Libous} and A7205 {Morelle}

^v S2467B {Libous} and A7198A {Morelle}.

^{vi} Part C Subpart A of Chapter 97 of the Laws of 2011.

^{vii} Part C Subpart B of Chapter 97 of the Laws of 2011.

^{viii} CGR: PREVAILING WAGE IN NEW YORK STATE THE IMPACT ON PROJECT COST AND COMPETITIVENESS JANUARY 2008.

^{ix} S. 6258/A. 9058 Part H section 4 amends Environmental Conservation Law, §11-0524 (6).

^x "New York's Deficit Shuffle (OSC April 2010).